

# Union Calendar No. 294

112<sup>TH</sup> CONGRESS  
2D SESSION

# H. R. 205

[Report No. 112-427]

To amend the Act titled “An Act to authorize the leasing of restricted Indian lands for public, religious, educational, recreational, residential, business, and other purposes requiring the grant of long-term leases”, approved August 9, 1955, to provide for Indian tribes to enter into certain leases without prior express approval from the Secretary of the Interior.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 2011

Mr. HEINRICH (for himself, Mrs. BONO MACK, and Mrs. LUMMIS) introduced the following bill; which was referred to the Committee on Natural Resources

APRIL 16, 2012

Additional sponsors: Mr. YOUNG of Alaska, Mr. COLE, Mr. KILDEE, Mr. LUJÁN, Mr. BOREN, Ms. RICHARDSON, Mr. DENHAM, Mr. HONDA, Mr. SHERMAN, Mrs. CHRISTENSEN, Mr. PALLONE, Mr. GRIJALVA, Mr. BACA, Mr. INSLEE, Ms. MCCOLLUM, Mr. KIND, Mr. PEARCE, and Ms. BALDWIN

APRIL 16, 2012

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on January 6, 2011]

# **A BILL**

To amend the Act titled “An Act to authorize the leasing of restricted Indian lands for public, religious, educational, recreational, residential, business, and other purposes requiring the grant of long-term leases”, approved August 9, 1955, to provide for Indian tribes to enter into certain leases without prior express approval from the Secretary of the Interior.

1       *Be it enacted by the Senate and House of Representa-*  
 2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       *This Act may be cited as the “Helping Expedite and*  
 5       *Advance Responsible Tribal Home Ownership Act of 2011”*  
 6       *or the “HEARTH Act of 2011”.*

7       **SEC. 2. APPROVAL OF, AND REGULATIONS RELATED TO,**  
 8               **TRIBAL LEASES.**

9       *The first section of the Act titled “An Act to authorize*  
 10       *the leasing of restricted Indian lands for public, religious,*  
 11       *educational, recreational, residential, business, and other*  
 12       *purposes requiring the grant of long-term leases”, approved*  
 13       *August 9, 1955 (25 U.S.C. 415), is amended as follows:*

14               *(1) In subsection (d)—*

15                       *(A) in paragraph (4), by striking “the Nav-*  
 16                       *ajo Nation” and inserting “an applicable Indian*  
 17                       *tribe”;*

18                       *(B) in paragraph (6), by striking “the Nav-*  
 19                       *ajo Nation” and inserting “an Indian tribe”;*

20                       *(C) in paragraph (7), by striking “and”*  
 21                       *after the semicolon at the end;*

22                       *(D) in paragraph (8)—*

23                               *(i) by striking “the Navajo Nation”;*

1                   (ii) by striking “with Navajo Nation  
2                   law” and inserting “with applicable tribal  
3                   law”; and

4                   (iii) by striking the period at the end  
5                   and inserting a semicolon; and

6                   (E) by adding at the end the following:

7                   “(9) the term ‘Indian tribe’ has the meaning  
8                   given such term in section 102 of the Federally Recog-  
9                   nized Indian Tribe List Act of 1994 (25 U.S.C.  
10                  479a); and

11                  “(10) the term ‘individually owned allotted land’  
12                  means a parcel of land that—

13                       “(A)(i) is located within the jurisdiction of  
14                       an Indian tribe; or

15                       “(ii) is held in trust or restricted status by  
16                       the United States for the benefit of an Indian  
17                       tribe or a member of an Indian tribe; and

18                       “(B) is allotted to a member of an Indian  
19                       tribe.”.

20                  (2) By adding at the end the following:

21                  “(h) TRIBAL APPROVAL OF LEASES.—

22                       “(1) IN GENERAL.—At the discretion of any In-  
23                       dian tribe, any lease by the Indian tribe for the pur-  
24                       poses authorized under subsection (a) (including any  
25                       amendments to subsection (a)), except a lease for the

1 *exploration, development, or extraction of any min-*  
2 *eral resources, shall not require the approval of the*  
3 *Secretary, if the lease is executed under the tribal reg-*  
4 *ulations approved by the Secretary under this sub-*  
5 *section and the term of the lease does not exceed—*

6 “(A) *in the case of a business or agricul-*  
7 *tural lease, 25 years, except that any such lease*  
8 *may include an option to renew for up to 2 ad-*  
9 *ditional terms, each of which may not exceed 25*  
10 *years; and*

11 “(B) *in the case of a lease for public, reli-*  
12 *gious, educational, recreational, or residential*  
13 *purposes, 75 years, if such a term is provided for*  
14 *by the regulations issued by the Indian tribe.*

15 “(2) *ALLOTTED LAND.—Paragraph (1) shall not*  
16 *apply to any lease of individually owned Indian al-*  
17 *lotted land.*

18 “(3) *AUTHORITY OF SECRETARY OVER TRIBAL*  
19 *REGULATIONS.—*

20 “(A) *IN GENERAL.—The Secretary shall*  
21 *have the authority to approve or disapprove any*  
22 *tribal regulations issued in accordance with*  
23 *paragraph (1).*

24 “(B) *CONSIDERATIONS FOR APPROVAL.—*  
25 *The Secretary shall approve any tribal regula-*

tion issued in accordance with paragraph (1), if  
the tribal regulations—

“(i) are consistent with any regulations issued by the Secretary under subsection (a) (including any amendments to the subsection or regulations); and

“(ii) provide for an environmental review process that includes—

“(I) the identification and evaluation of any significant effects of the proposed action on the environment;  
and

“(II) a process for ensuring that—

“(aa) the public is informed of, and has a reasonable opportunity to comment on, any significant environmental impacts of the proposed action identified by the Indian tribe; and

“(bb) the Indian tribe provides responses to relevant and substantive public comments on any such impacts before the Indian tribe approves the lease.

1           “(C) *TECHNICAL ASSISTANCE.*—*The Sec-*  
2           *retary may provide technical assistance, upon*  
3           *request of the Indian tribe, for development of a*  
4           *regulatory environmental review process under*  
5           *subparagraph (B)(ii).*

6           “(D) *INDIAN SELF-DETERMINATION ACT.*—  
7           *The technical assistance to be provided by the*  
8           *Secretary pursuant to subparagraph (C) may be*  
9           *made available through contracts, grants, or*  
10          *agreements entered into in accordance with, and*  
11          *made available to entities eligible for, such con-*  
12          *tracts, grants, or agreements under the Indian*  
13          *Self-Determination Act (25 U.S.C. 450 et seq).*

14          “(4) *REVIEW PROCESS.*—

15               “(A) *IN GENERAL.*—*Not later than 120*  
16               *days after the date on which the tribal regula-*  
17               *tions described in paragraph (1) are submitted*  
18               *to the Secretary, the Secretary shall review and*  
19               *approve or disapprove the regulations.*

20               “(B) *WRITTEN DOCUMENTATION.*—*If the*  
21               *Secretary disapproves the tribal regulations de-*  
22               *scribed in paragraph (1), the Secretary shall in-*  
23               *clude written documentation with the dis-*  
24               *approval notification that describes the basis for*  
25               *the disapproval.*

1           “(C) *EXTENSION.*—*The deadline described*  
2           *in subparagraph (A) may be extended by the*  
3           *Secretary, after consultation with the Indian*  
4           *tribe.*

5           “(5) *FEDERAL ENVIRONMENTAL REVIEW.*—*Not-*  
6           *withstanding paragraphs (3) and (4), if an Indian*  
7           *tribe carries out a project or activity funded by a*  
8           *Federal agency, the Indian tribe shall have the au-*  
9           *thority to rely on the environmental review process of*  
10          *the applicable Federal agency rather than any tribal*  
11          *environmental review process under this subsection.*

12          “(6) *DOCUMENTATION.*—*If an Indian tribe exe-*  
13          *cutes a lease pursuant to tribal regulations under*  
14          *paragraph (1), the Indian tribe shall provide the Sec-*  
15          *retary with—*

16               “(A) *a copy of the lease, including any*  
17               *amendments or renewals to the lease; and*

18               “(B) *in the case of tribal regulations or a*  
19               *lease that allows for lease payments to be made*  
20               *directly to the Indian tribe, documentation of the*  
21               *lease payments that are sufficient to enable the*  
22               *Secretary to discharge the trust responsibility of*  
23               *the United States under paragraph (7).*

24          “(7) *TRUST RESPONSIBILITY.*—



1           “(A) *IN GENERAL.*—*The United States shall*  
2           *not be liable for losses sustained by any party to*  
3           *a lease executed pursuant to tribal regulations*  
4           *under paragraph (1).*

5           “(B) *AUTHORITY OF SECRETARY.*—*Pursu-*  
6           *ant to the authority of the Secretary to fulfill the*  
7           *trust obligation of the United States to the appli-*  
8           *cable Indian tribe under Federal law (including*  
9           *regulations), the Secretary may, upon reasonable*  
10          *notice from the applicable Indian tribe and at*  
11          *the discretion of the Secretary, enforce the provi-*  
12          *sions of, or cancel, any lease executed by the In-*  
13          *dian tribe under paragraph (1).*

14          “(8) *COMPLIANCE.*—

15          “(A) *IN GENERAL.*—*An interested party,*  
16          *after exhausting of any applicable tribal rem-*  
17          *edies, may submit a petition to the Secretary, at*  
18          *such time and in such form as the Secretary de-*  
19          *termines to be appropriate, to review the compli-*  
20          *ance of the applicable Indian tribe with any*  
21          *tribal regulations approved by the Secretary*  
22          *under this subsection.*

23          “(B) *VIOLATIONS.*—*If, after carrying out a*  
24          *review under subparagraph (A), the Secretary*  
25          *determines that the tribal regulations were vio-*

1        *lated, the Secretary may take any action the*  
2        *Secretary determines to be necessary to remedy*  
3        *the violation, including rescinding the approval*  
4        *of the tribal regulations and reassuming respon-*  
5        *sibility for the approval of leases of tribal trust*  
6        *lands.*

7                *“(C) DOCUMENTATION.—If the Secretary*  
8        *determines that a violation of the tribal regula-*  
9        *tions has occurred and a remedy is necessary,*  
10       *the Secretary shall—*

11                *“(i) make a written determination*  
12       *with respect to the regulations that have*  
13       *been violated;*

14                *“(ii) provide the applicable Indian*  
15       *tribe with a written notice of the alleged*  
16       *violation together with such written deter-*  
17       *mination; and*

18                *“(iii) prior to the exercise of any rem-*  
19       *edy, the rescission of the approval of the*  
20       *regulation involved, or the reassumption of*  
21       *lease approval responsibilities, provide the*  
22       *applicable Indian tribe with—*

23                *“(I) a hearing that is on the*  
24       *record; and*

1                   “(II) a reasonable opportunity to  
2                   cure the alleged violation.

3                   “(9) SAVINGS CLAUSE.—Nothing in this sub-  
4                   section shall affect subsection (e) or any tribal regula-  
5                   tions issued under that subsection.”.

6 **SEC. 3. LAND TITLE REPORTS.**

7           (a) *IN GENERAL.*—The Bureau of Indian Affairs shall  
8           prepare and submit to the Committee on Natural Resources  
9           of the House of Representatives and the Committee on In-  
10          dian Affairs of the Senate a report regarding the history  
11          and experience of Indian tribes that have chosen to assume  
12          responsibility for operating the Indian Land Title and  
13          Records Office (referred to in this section as the “LTRO”)  
14          functions from the Bureau of Indian Affairs.

15          (b) *CONSULTATION.*—In conducting the review under  
16          subsection (a), the Bureau of Indian Affairs shall consult  
17          with the Department of Housing and Urban Development  
18          Office of Native American Programs and the Indian tribes  
19          that are managing LTRO functions (referred to in this sec-  
20          tion as the “managing Indian tribes”).

21          (c) *CONTENTS.*—The review under subsection (a) shall  
22          include an analysis of the following factors:

23                  (1) Whether and how tribal management of the  
24                  LTRO functions has expedited the processing and  
25                  issuance of Indian land title certifications as com-

1        *pared to the period during which the Bureau of In-*  
2        *dian Affairs managed the programs.*

3                *(2) Whether and how tribal management of the*  
4        *LTRO functions has increased home ownership*  
5        *among the population of the managing Indian tribe.*

6                *(3) What internal preparations and processes*  
7        *were required of the managing Indian tribes prior to*  
8        *assuming management of the LTRO functions.*

9                *(4) Whether tribal management of the LTRO*  
10        *functions resulted in a transfer of financial resources*  
11        *and manpower from the Bureau of Indian Affairs to*  
12        *the managing Indian tribes and, if so, what transfers*  
13        *were undertaken.*

14                *(5) Whether, in appropriate circumstances and*  
15        *with the approval of geographically proximate Indian*  
16        *tribes, the LTRO functions may be performed by a*  
17        *single Indian tribe or a tribal consortium in a cost*  
18        *effective manner.*

Amend the title so as to read: “A bill to amend the Act titled ‘An Act to authorize the leasing of restricted Indian lands for public, religious, educational, recreational, residential, business, and other purposes requiring the grant of long-term leases’, approved August 9, 1955, to provide for Indian tribes to enter into certain leases without prior express approval from the Secretary of the Interior, and for other purposes.”.



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